

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY)	
AVERAGE WHOLESALE PRICE LITIGATION)	MDL No. 1456
THIS DOCUMENT RELATES TO)	Civil Action No. 01-CV-12257 PBS
01-CV-12257-PBS, 01-CV-339 AND)	Judge Patti B. Saris
1:03-CV-11226-PBS)	Chief Magistrate Judge Marianne B. Bowler

DEFENDANT BRISTOL-MYERS SQUIBB COMPANY'S MOTION TO COMPEL THE PRODUCTION OF EXHIBITS TO A LETTER SENT BY PLAINTIFF VEN-A-CARE OF THE FLORIDA KEYS TO HCFA

Defendant Bristol-Myers Squibb Company respectfully moves this Court for an order compelling plaintiff Ven-A-Care of the Florida Keys, Inc. ("Ven-A-Care") to produce two volumes of exhibits enclosed with a letter it sent to the Health Care Financing Administration ("HCFA", now, Centers for Medicare and Medicaid Services ("CMS")) pursuant to several requests for production communicated to Ven-A-Care, and for such other and further relief as the Court deems just and appropriate. The grounds for this motion are set forth in the accompanying memorandum of law, declaration of Lyndon M. Tretter and exhibits thereto.

CERTIFICATION PURSUANT TO LOCAL RULE 37.1

Pursuant to Local Rule 7.1(a)(2), the undersigned counsel hereby certifies that counsel for Bristol-Myers Squibb Company attempted to confer with counsel for Ven-A-Care regarding the issues addressed in this motion, but was unable to resolve or further narrow the issues. More specifically, on March 6, 2006, Mr. Tretter spoke with Ven-A-Care's counsel, Jim Breen, and asked whether Ven-A-Care would produce the two volumes of exhibits to the Ven-A-Care Letter. On that same day, Mr. Tretter sent Mr. Breen an e-mail confirming their telephone

conversation. Thereafter, Mr. Tretter left two messages with Mr. Breen's receptionist that were not returned. On March 21, Mr. Tretter sent Mr. Breen a second e-mail asking Ven-A-Care to produce the exhibits and advising him that if Ven-A-Care did not produce the exhibits, it would be necessary to bring this dispute to the attention of the Magistrate Judge.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d) the undersigned counsel hereby requests oral argument on the issues set forth in this motion and the accompanying memorandum of law and exhibits.

Dated: Boston, Massachusetts
April 7, 2006

Respectfully Submitted,

By: /s/ Jacob T. Elberg
Jacob T. Elberg (BBO No. 657469)
Thomas E. Dwyer (BBO No. 139660)
DWYER & COLLORA, LLP
600 Atlantic Avenue
Boston, MA 02210
Tel: (617) 371-1000
Fax: (617) 371-1037
tdwyer@dwyercollora.com
jelberg@dwyercollora.com

Steven M. Edwards (SE 2773)
Lyndon M. Tretter (LT 4031)
Admitted *pro hac vice*
HOGAN & HARTSON LLP
875 Third Avenue
New York, NY 10022
Tel: (212) 918- 3640

Attorneys for Defendant Bristol-Myers Squibb
Company

CERTIFICATE OF SERVICE

I certify that on April 7, 2006 a true and correct copy of the forgoing DEFENDANT BRISTOL-MYERS SQUIBB COMPANY'S MOTION TO COMPEL THE PRODUCTION OF EXHIBITS TO A LETTER SENT BY PLAINTIFF VEN-A-CARE OF THE FLORIDA KEYS TO HCFA was served on all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Lyndon M. Tretter

Lyndon M. Tretter